

RICHARD C. DAVIS

IBLA 82-691

Decided June 17, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 11360 and N MC 11361.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the claim is conclusively presumed to be abandoned.

APPEARANCES: Richard C. Davis, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Richard C. Davis appeals the April 1, 1982, decision of the Nevada State Office, Bureau of Land Management (BLM), which declared the unpatented Close #1 and Grey Rock #1 lode mining claims, N MC 11360 and N MC 11361, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM by December 30, 1978, as required by 43 CFR 3833.2.

The claims were located in November 1977, and recorded with BLM December 6, 1977, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The record does not

show any proof of labor or notice of intention to hold the claims as being filed in calendar year 1978, but a proof of labor has been filed in each subsequent year, 1979, 1980, 1981, and 1982.

Appellant states there was much confusion when FLPMA was enacted October 21, 1976, especially as to treatment of pre-FLPMA mining claims as contrasted with post-FLPMA claims. He suggests that if he had delayed recording his notices of location with BLM until after January 1, 1978, and still being within the 90-day limit set by FLPMA, his proof of labor for 1979 would have satisfied the requirement of FLPMA.

Section 314 of FLPMA provides, in pertinent part:

Sec. 314. (a) * * * The owner of an unpatented lode or placer mining claim located after the date of this Act shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

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(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner.

[1] It is crystal clear that the owner of an unpatented mining claim located in 1977 must either file a proof of labor or a notice of intention to hold the claim, both in the county recorder's office where the location notice is of record and in the proper office of BLM, prior to December 31, 1978. The date of recordation of the location notice with BLM has no bearing on this situation; it is the date of physical location which determines the year in which the proof of labor or notice of intention must be first filed. Thus, it would have availed appellant nothing if he had delayed recording his claims with BLM until after January 1, 1978. Where, as in these cases, no

proof of labor or notice of intention to hold the claims was filed with BLM in 1978, the mining claims were properly deemed abandoned and void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

